

Before the
Federal Communications Commission
Washington, D.C. 20554

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Notice of Proposed Rulemaking)) CS Docket No. 02-52
Appropriate Regulatory Treatment for)	
Broadband Access to the Internet Over)	
Cable Facilities)	
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Comment of the City of Hewitt, Texas

These comments are filed by the City of Hewitt, Texas in support of the comments filed by the Alliance of Local Organizations Against Preemption (the “Alliance”). Like the Alliance, the City of Hewitt believes that (a) local communities should be able to require cable operators to obtain additional authorization to use and occupy public rights of way to provide cable services, and to enforce existing authorizations that have been granted for the service; (b) should be able to obtain fair and reasonable compensation for use and occupancy of the public rights of way to provide non-cable services; and (c) should be able to regulate cable companies in their provision of non-cable services, as provided under the Cable Act.

The city issued a franchise in 2000. Pursuant to the franchise agreement, the city is entitled to receive franchise fees on cable modem service. Section 1.01(s) of Ordinance Number 03-06-2000A includes the following definition for gross revenues, “...Revenues received by Franchisee from the delivery of internet access service over its Cable System shall be included in Gross Revenues ...” Payments have been made in consideration of the grant of this franchise. The city’s franchise was written to permit the operator to provide both cable services and other services, so long as the operator complied with the franchise terms.

Hewitt also issued a franchise in 1993 and did not directly address cable modem service. However, under our franchise the definition of gross revenues is broad enough to include cable modem service. Section 2R of Ordinance Number 04-19-93 defines gross revenues as

...revenues collected by the Grantee. Such gross revenues shall include but not be limited to regular Subscriber revenues, net Pay Television revenues, Additional Services revenues, [which include data or other electronic intelligence transmission], revenues resulting from connection or reconnection fees of any kind, revenues resulting from the sale or rental of equipment of any kind and fees received for lease of channels.

Pursuant to this provision, we were entitled to receive franchise fees on cable modem service.

The city has received payments for cable modem franchise fees under this agreement. These payments were made in consideration of the grant of the franchise. The franchise was written to permit the operator to provide both cable services and other services, as long as the operator complied with the franchise terms. In neither of the aforementioned franchises have the requirements of the fee prevented or delayed the roll-out of cable modem service in the City of Hewitt.

Respectfully submitted,

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